

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO THE RESALE)
OF INTRASTATE WIDE AREA) ADMINISTRATIVE CASE NO. 261
TELECOMMUNICATIONS SERVICE)

O R D E R

On October 18, 1982, Call U.S. of Kentucky, Inc., ("Call U.S.") filed Case No. 8684, an application requesting a certificate of public convenience and necessity to provide telecommunications services within the Commonwealth of Kentucky through the resale of intrastate wide area telecommunications service ("WATS") which would be obtained from the existing regulated telephone utilities operating in Kentucky. The current WATS tariff of South Central Bell Telephone Company ("Bell"), concurred in by all other telephone utilities in Kentucky, prohibits the resale of intrastate WATS. The applicable tariff pages are as follows:

PSC Ky. Tariff 1A
Original Page 1
Section A2.2.1-6

PSC Ky. Tariff 1A
Second Revised Page 1.1
Section A 19.2

After considering the matter, the Commission determined that this administrative proceeding should be established and a public hearing be held to determine the reasonableness of Bell's tariff prohibition of intrastate WATS resale. This issue affects not only Call U.S. and other parties who have expressed interest to the Commission in intrastate WATS resale, but also all regulated telephone utilities.

On February 11, 1983, Bell filed a motion requesting that the public hearing be continued and consolidated with hearings on proposed restructured tariff filings for intrastate WATS. The reason given for the motion was that the Federal Communications Commission ("FCC"), in its Order dated January 27, 1983, in Docket No. 83-40, American Telephone and Telegraph Company and the Bell System Operating Companies Restrictions on the Resale and Sharing of Switched Services used for Completion of Interstate Communications, ruled that resale and sharing restrictions may not be applied to intrastate WATS used to complete or originate interstate communications. The FCC specifically stated that the ruling did not extend to restrictions which pertain solely to the provision of WATS used in intrastate communications.¹

In its motion, Bell suggested that in light of the FCC ruling, it would promptly file restructured and repriced Kentucky intrastate WATS tariffs. Bell further proposed to remove the resale and sharing prohibitions from the tariffs. These tariffs were filed on March 15, 1983.

¹p. 7.

A public hearing was held on May 17, 1983, with all parties of record allowed to present evidence. Those parties included Bell, Finance and Administration Cabinet, Commonwealth of Kentucky ("Finance"), Call U.S. and Tel-a-Marketing Communications ("TMC").

DISCUSSION

Prior to the hearing, the Commission directed that interested parties file testimony addressing the following: (1) what regulatory conditions the Commission should impose on the resale of intrastate WATS; (2) whether purely intrastate WATS calls could be screened and blocked if such resale were prohibited; (3) whether there should be a separate rate structure applicable only to intrastate WATS resellers; and (4) any other relevant issues.

There was essentially no disagreement among any of the parties with respect to Bell's position that resale of intrastate WATS should be allowed by the Commission. While the FCC's decision is limited to intrastate WATS used in interstate communications, both Bell and the WATS resellers contended in their filings that they are unable to determine the point of origin of calls in order to screen and block purely intrastate calls. In effect, once intrastate WATS is provided, it can be used for both intra- and interstate communications, without any party being able to "police" its use.

Finance opposed Bell's proposed restructuring and repricing of intrastate WATS. Its witness, Dr. Lee Selwyn, suggested different rates for WATS to be provided an end user (lower) and a reseller (higher). On cross-examination, Bell produced a letter-

ruling of the FCC, dated March 11, 1983, (South Central Bell Exhibit 3) indicating that different WATS rates for end users and resellers may not be permissible under current FCC policy.

The fundamental issue in this proceeding is whether the overall public interest is best served by the resale of intrastate WATS. The Commission received varying opinions on this issue. The WATS resellers have made a compelling case that a segment of the telephone subscriber population would benefit from the proposed change. However, the parties were unable to quantify the relationship between the benefits which would accrue to some subscribers and the possible detrimental effect on others. The parties were in agreement that some intrastate message toll service ("MTS") users are not potential customers of the WATS resellers, since they would not make enough toll calls to justify entry fee or minimum monthly charges. Bell introduced evidence predicting a revenue shortfall due to a shift of customers from MTS to WATS, whether at current or proposed rates.

In the short run it is apparent that the resale of WATS will cause a revenue shortfall due to the customer shift from MTS to WATS. However, in the future, resale of WATS should provide for a more efficient utilization of available system capacity which will benefit all customers. The marketplace will indicate willingness of the resale users to accept higher levels of blockage and diminished quality of service, and this may lessen the need for further construction by the telephone utilities. A slowdown in construction and expansion may lower revenue require-

ments in the future, thereby providing benefit to all subscribers.

The Commission solicited testimony with respect to the price differential between WATS and MTS, particularly whether the differential can be justified on a cost of service basis. The parties were unable to supply definitive information in this area, and the Commission has no evidence that the existing differential is justified. However, the resale of WATS will allow the marketplace to determine the economic justification for WATS. Resellers exist in this market because of the differential between MTS and WATS rates. If there is no justification for WATS, then the rate differential between the two services will tend toward equality. Therefore, the Commission will allow the resale of intrastate WATS, consistent with implementation of a restructured WATS tariff discussed below. Further, the Commission finds that each reseller of WATS is a utility within the meaning of KRS 278.010(3)(e).

Call U.S. also proposed that the Commission allow the resale and sharing of private line services. There was limited testimony on this issue, and the Commission finds that it has insufficient information for an informed judgment at this time. Additionally, further study of the structure and pricing of private line services would be necessary to determine whether they are appropriate for a resale environment. Therefore, the Commission will deny the resale and sharing of private line services at this time.

Since the Commission will allow WATS resale, the regulatory requirements to be imposed on the resellers must be determined. Since they will be a regulated utility under Chapter 278, Kentucky Revised Statutes, resellers must file an application and obtain a certificate of public convenience and necessity under KRS 278.020. Further, they must file tariffs conforming to the rules and regulations of the Commission including their rules of operation.

Although the Commission agrees with the contentions of the parties that the marketplace will operate to assure the public of fair, just and reasonable rates for resold WATS, KRS 278.160(2) requires that "[N]o utility shall charge...a greater or less compensation for any service rendered...than that prescribed in its filed schedules..." Therefore, the reseller utilities must file tariffs showing minimum and maximum rates for their services.

Although neither Bell's existing nor restructured WATS tariff is cost based, it is clear that each along with its MTS alternative provides a contribution to Bell operations. In other words, there is no flow of subsidy from basic exchange and other services to WATS and MTS. Instead, the opposite is the case. Also, the Commission believes that the restructured is preferable to the existing tariff because it is more usage sensitive and should track cost causation in a more efficient manner. Therefore, the Commission will allow Bell to implement the restructured WATS tariff, effective November 1, 1983, which is the earliest date that necessary billing system modifications can be accomplished.

Dr. Lee Selwyn, representing Finance, opposed the restructured WATS tariff on the grounds that Bell had not shown it to be superior to the existing tariff in a resale environment and because it would result in increased billing to some customers. The Commission is of the opinion that the restructured tariff is more appropriate to a resale environment than the existing tariff, to the extent that it is more usage sensitive. Also, the Commission is aware that any tariff restructure results in billing aberrations, with some customers experiencing increased billing and some customers experiencing decreased billing, particularly when consistency of revenue is an objective. This is the case with the WATS tariff restructure and, in the opinion of the Commission, it is an essentially unavoidable consequence.

Finally, the Commission is concerned about the conditions under which WATS can be provided after Bell's divestiture from American Telephone and Telegraph and, indeed, whether WATS is a viable service in the post-divestiture environment. Therefore, the Commission serves notice on all parties that it may initiate an investigation into WATS in the post-divestiture environment and/or the elimination of WATS in the near future.

FINDINGS

1. The resale of intrastate WATS is in the public interest and should be approved effective November 1, 1983;

2. Bell's proposed tariff removing the prohibition of the resale of intrastate WATS and restructuring intrastate WATS rates should be approved in order to allow such resale effective November 1, 1983;

3. Insufficient evidence was offered to justify resale and sharing of private line services at this time; and

4. WATS resellers are utilities within the meaning of Chapter 278, Kentucky Revised Statutes, and are subject to the jurisdiction of this Commission.

IT IS THEREFORE ORDERED that Bell's application for the removal of the prohibition against the resale of intrastate WATS and the restructuring of intrastate WATS rates be and it hereby is approved effective November 1, 1983.

IT IS FURTHER ORDERED that the petition of Call U.S. for removal of the prohibition against resale and sharing of private line services be and it hereby is denied.

IT IS FURTHER ORDERED that any party desiring to resell intrastate WATS shall obtain a certificate of public convenience and necessity and comply with the rules and regulations of this Commission prior to offering such service.

Done at Frankfort, Kentucky this 2nd day of September, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary